

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**January 29, 2013**

**The Rhode Island Ethics Commission held its 2nd meeting of 2013 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 29, 2013, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair   John M. LaCross**

**Deborah M. Cerullo SSND, Vice Chair Edward A. Magro**

**Mark B. Heffner\*   James V. Murray**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m. the Chair opened the meeting. The Chair stated that Attorney Anthony M. Traini, legal counsel for Charles D. Moreau,**

asked if Mr. Moreau's matter could be heard first because Attorney Traini had to attend a hearing in Superior Court. There was a consensus to accommodate Attorney Traini's schedule. At approximately 9:01 a.m., upon motion made and duly seconded, it was unanimously

**VOTED: To go into Executive Session, to wit:**

a) In re: Charles D. Moreau, Complaint No. 2010-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

\* Commissioner Heffner arrived at 9:05 a.m.

The Commission reconvened in Open Session at approximately 9:08 a.m. Chair Cheit reported that the Commission unanimously approved an Informal Resolution & Settlement in the matter of In re: Charles D. Moreau, Complaint No. 2010-2. He stated that the remainder of the executive session matters will be heard later, in the order listed on the agenda.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:

**David R. Green, a member of the East Greenwich School Committee, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the School Committee's negotiations with the East Greenwich Teachers' Union relative to a collective bargaining agreement that will take effect after the termination of his spouse's "one year only" teaching position in the East Greenwich School Department.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Murray, the Petitioner replied that his spouse was not a member of the Teachers' Union when she was a substitute or long term substitute teacher. He further stated that he asked his wife if she would seek another permanent teaching position, which would make her a member of the Union next year. He explained that he pressed her on the issue and she stated that she is positive that she will not seek another permanent position because she has already retired from teaching in another state and is not looking to start another career. Upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to David R. Green, a member of the East Greenwich School Committee.**

**The final advisory opinion was that of:**

**Robert T. O'Neill, M.D., a member of the Narragansett Zoning Board, requesting an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on appearing before his own Board to obtain a variance for his personal residence.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner and his spouse were present. The Petitioner stated that they first put the house up for sale in 2007 and have lowered the price seven (7) times. He stated that they are not under contract with a particular buyer. He explained that the idea for the variance arose after some potentially interested parties stated that they would prefer to use his house as a guesthouse. He further stated that a nearby, comparable home on Ocean Road was sold in the fall and is being torn down. He stated that he would like to see his historic property preserved.**

**In response to Commissioner Heffner, the Petitioner replied that when they first put the home on the market in 2007 they received an offer for half the price and turned it down. He stated that he has one potential offer now but it is very contingent on receiving this variance. He explained that his house is on the National Register of Historic Places and has been listed by the Rhode Island Historic Preservation and Heritage Commission as a unique historical property in Narragansett. He added that the National Register only protects the house from having a highway put through it, there are no other restrictions. He observed that the people interested in buying**

similar houses in Narragansett are looking for larger houses. He stated that the prospective buyer is willing to pay near the asking price of \$3.9 million if he can get this variance. With respect to other nearby properties, he stated that another house recently sold for \$3.1 million; similar properties nearby have sold for \$6.5 million and \$5.7 million in the past two (2) years.

In response to Commissioner Cerullo, the Petitioner stated that he consulted with the Town Planner, Town Building Inspector and the Town Legal Counsel prior to requesting this advisory opinion and their primary concern was that he would need to get an advisory opinion before requesting the variance. He stated that the Zoning Board has considered similar variances in the past, at least two (2) times, and both were approved. He added that he has not approached his fellow board members about his request.

In response to Chair Cheit, the Petitioner stated that even if he obtains the variance the new owners could still tear the house down. He stated that this is an important historical property, there since 1883, and it would be bad for the Town to lose it. He added that the idea of getting the variance first came up in the fall at the suggestion of his realtor.

In response to Commissioner Heffner, Legal Counsel Alves replied that even if the Petitioner resigned from the Zoning Board he would still be prohibited from seeking this application until one (1) year after

**his severance from the Board.**

**Commissioner Cerullo asked if the variance is necessary to sell the property. The Petitioner replied that everyone who has looked at his house liked it, but they were looking for a bigger house and said that they would feel bad knocking his house down. Therefore, he said those people bought comparable properties. In response to Chair Cheit, the Petitioner said that his house is not located in a historic district.**

**Staff Attorney Stewart indicated that under the totality of the circumstances analysis, which is applied to hardship exceptions, the Commission can consider the preservation of a historic property, along with the fact that the Petitioner has a vested property right and it is his principal residence, in determining whether an exception should be granted. She stated that prior advisory opinions have recognized a need for flexibility in the case of vested property rights and those opinions did not define hardship in economic terms.**

**Chair Cheit, recalling Commissioner LaCross' comment at the last meeting, stated that the Commission is not deciding whether the variance should issue, it is deciding whether the Petitioner can seek the variance from his own Board.**

**Commissioner Murray stated that he was torn, but he noted that the Petitioner bought this property long before his appointment to the**

**Zoning Board and there have only been two (2) offers to purchase it within the last seven (7) years. He stated that he was inclined to find that the Petitioner should be able to appear before his own Board and let the Zoning Board decide whether to issue the variance. Commissioner Magro agreed and stated that the Commission has never said that the hardship has to be where there is only one alternative or judged if it was the best alternative. He noted that this was not a commercial enterprise but the Petitioner's home and he wants to sell it at a good price. Chair Cheit stated that the Petitioner wants to sell his home at a good price and not have the property torn down.**

**Commissioner Heffner expressed concern about the precedential effect of this advisory opinion. He stated that he believed hardship to be an economic issue. Chair Cheit replied that these unique factual cases are limited to the facts therein and have limited precedential value.**

**Commissioner Cerullo stated that she was moved by the Petitioner's statements that two (2) nearby properties were chosen over his because the buyers did not want to tear down his historic home. She stated that it was good to know that the Zoning Board has previously granted similar variances.**

**In response to Commissioner LaCross, Legal Counsel Alves stated that four (4) votes are necessary out of the five (5) sitting board**

members to approve a variance. In response to Commissioner Cerullo, the Petitioner stated that only the owner of the property can request a zoning variance. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was

**VOTED:** To issue an advisory opinion, attached hereto, to Robert T. O'Neill, M.D., a member of the Narragansett Zoning Board of Review.

**AYES:** James V. Murray; Edward A. Magro; Deborah M. Cerullo; John M. LaCross; Ross Cheit.

**NOES:** Mark B. Heffner.

Commissioner Heffner stated at the time of his vote that he voted not to approve the draft because he believes that hardship should be an economic hardship. Chair Cheit stated that this was a difficult decision but he was persuaded that the Commission can consider a broad range of issues and this was a unique situation.

The next order of business was the approval of minutes of the Open Session held on January 8, 2013. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Cerullo, it was

**VOTED:** To approve minutes of the Open Session held on January 8, 2013.



**AYES: John M. LaCross; James V. Murray; Mark B. Heffner; Ross Cheit.**

**ABSTENTIONS: Edward A. Magro; Deborah M. Cerullo.**

**The next order of business was a discussion regarding the 2012 Financial Disclosure Statement Form. Staff Attorney Gramitt informed that the 2012 statement will be online and public officials will also be able to amend their 2011 statements online. He informed that a question regarding the new out-of-state travel disclosure regulation will be on both the paper form and online. He stated that he has received questions from state agencies, department heads and members of the General Assembly regarding the fact that the disclosure includes travel that occurred prior to the effective date of the regulation. He stated that the concern for this first filing is that they could make an inadvertent mistake due to a lack of records because they were not on notice in the beginning of 2012 that such information would have to be disclosed. He suggested including something in the 2012 filing instructions to the effect that given that this is the first travel disclosure year and adequate records may not have been kept, required filers are expected to take reasonable steps to provide information. However, he stated that this would only be limited to filing year 2012.**

**In response to Commissioner Cerullo, Staff Attorney Gramitt stated**

that if a complaint was filed relating to a 2012 travel disclosure, the Commission could take this particular instruction into account at Initial Determination or Probable Cause, but it would not prevent a complaint from being accepted. Chair Cheit invited comment from John Marion of Common Cause of Rhode Island. Mr. Marion stated that this seemed fair as long as going forward all expenses must be reported. Chair Cheit understood the concerns and directed Staff to draft appropriate language regarding the implementation of the travel disclosure regulation during its first year and directing filers to make a good-faith effort in answering the question.

The next order of business was a discussion regarding a statute of limitations for ethics violations. Senior Staff Attorney D'Arezzo stated that this was a recurring issue that was postponed until rulemaking for the travel disclosure had been completed. She stated that the Commissioners were provided with her and Legal Counsel Alves' prior research memoranda on the matter. She informed that Legal Counsel Alves had advised that the Commission has the authority to enact substantive ethics regulations; therefore, it could adopt a statute of repose. She stated that the Commission could proceed with the regulatory process or rely on the ten (10) year civil catch-all statute of limitations. She recalled that the Commission previously discussed time periods of three (3), four (4) and six (6) years. She also noted that Commissioner Lynch expressed support for a time limit after an individual leaves public service. She stated that if the Commission does not adopt a regulation, guidance should

be provided to Staff as to whether complaints alleging violations older than ten (10) years should be rejected by the Executive Director under the catch-all civil statute or brought before the Commission for Initial Determination.

Chair Cheit stated that he also thought a limit of five (5) years should be considered. Commissioner Murray stated that he preferred codifying a limitation and not relying on the civil catch-all statute. Chair Cheit stated that he believes three (3) years is too short given that we maintain records on site for five (5) years. He agreed with Commissioner Murray that the Commission should promulgate its own rule. He added that the Commission does not want to see a complaint regarding nine (9) year old conduct. In response to Chair Cheit, Executive Director Willever responded that under the current practice the Commission does not have discretion to reject a nine (9) year old case at initial determination.

In response to Commissioner LaCross, Senior Staff Attorney D'Arezzo stated that, in her fifteen (15) years of experience, the longest time between the last instance of conduct and the filing of a complaint was less than five (5) years, but generally most complaints concern conduct that just took place or occurred within the past one (1) or two (2) years. Legal Counsel Alves clarified that a statute of repose is a drop dead date when complaints can no longer be accepted, even if the conduct was concealed. Chair Cheit had concerns about not including a provision related to the discovery of

**concealed conduct.**

**Commissioner Murray and Chair Cheit both stated that they would like to move forward with the rulemaking process. Commissioner Cerullo stated she would like to have some comparison with similar criminal statutes of limitations, where relevant. Senior Staff Attorney D'Arezzo stated that she would provide the Commission with options to consider. Commissioner Cerullo added that there should be a ten (10) year option as well. Chair Cheit directed Staff to provide regulatory options to discuss at a future meeting prior to entering into rulemaking.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are twelve (12) complaints pending. He added that there are two (2) advisory opinions and one (1) litigation matter pending. He also stated that three (3) APRA requests were granted since the last meeting.**

**At approximately 10:41 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**(a) Motion to approve minutes of Executive Session held on January 8, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2)**

**and (4).**

**(b) In re: Eunice D. Delahoz, Complaint No. NF2012-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**(c) In re: D. Alan Scribner, Complaint No. NF2012-18, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**(d) In re: Joshua Barrette, Complaint No. NF2012-19, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**(e) In re: Lianne M. Russell, Complaint No. NF2012-4, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 11:01 a.m. The next order of business was a motion to seal the minutes of the January 29, 2013, Executive Session. Upon motion made by Commissioner Magro and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To seal the minutes of the January 29, 2013, Executive Session.**

**Chair Cheit reported that the Commission took the following actions in Executive Session:**

**1. Unanimously voted to approve the minutes of the Executive**

**Session held on January 8, 2013.**

- 2. In re: Eunice D. Delahoz, Complaint No. NF2012-1, was removed from the agenda having been settled prior to today's meeting.**
- 3. Unanimously voted that there is probable cause to believe that the Respondent violated the Code of Ethics in the matter of In re: D. Alan Scribner, Complaint No. NF2012-18.**
- 4. Unanimously voted that there is probable cause to believe that the Respondent violated the Code of Ethics in the matter of In re: Joshua Barrette, Complaint No. NF2012-19.**
- 5. Unanimously voted to grant Prosecution's Motion to Dismiss In re: Lianne M. Russell, Complaint No. NF2012-4, without prejudice.**

**The next order of business was New Business and general comments from the Commission. Chair Cheit congratulated Commissioner Frederick K. Butler on his recent election to serve as chair of the Rhode Island Foundation.**

**At 11:04 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**John D. Lynch, Jr.**  
**Secretary**